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Fast Track Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-10, 30-50 and 12 VAC 30-120-61 through 66
Regulation title	WAIVERED SERVICES: Program of All-Inclusive Care for the Elderly (PACE)
Action title	PACE Program Update
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

DMAS is currently seeking to enhance the integration of acute care and long-term care services for the elderly and persons with disabilities. Through this regulatory action DMAS intends to implement a regional model for the integration of acute and long-term care services by no later than January 2007. This model would be offered to the elderly and persons with disabilities on a voluntary basis through the Program for All-Inclusive Care for the Elderly (PACE). DMAS has had in place a pre-PACE program for several years, and is now seeking to expand that program throughout the Commonwealth of Virginia.

Statement of agency final action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background Document with the attached amended State Plan pages: State Plan Under Title XIX of the Social Security Act (12 VAC 30-10-140), Amount, Duration and Scope of Medical and Remedial Services (12 VAC 30-50-20, --60, --320, -321, --325 and --328); and state regulations: Waivered Services (12 VAC 30-120-61 through 12 VAC 30-120-66) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act and is full, true, and correctly dated.

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board’s requirements. The Medicaid authority as established by §1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to incorporate changes that will update the PACE regulations to reflect the fact that the federal government is no longer enrolling pre-PACE providers, but is requiring all state PACE programs to become full PACE programs. These regulations will allow DMAS to develop and implement a regional model for the integration of acute and long-term care services. This will help protect the health and welfare of elderly citizens of the Commonwealth by enhancing their ability to remain in their homes while having access to comprehensive medical care geared towards their unique health needs.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The agency is using the fast-track process to complete the needed regulatory changes to give the provider community the ability to begin to offer PACE services as soon as possible after the first of the year. This regulatory action will implement policy changes that are in line with Federal and State requirements because the federal government is phasing out all pre-PACE programs and moving all states towards full PACE investment.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

PACE was created in 1973 in an effort to help the Asian-American community in San Francisco care for its elders in their own homes. The option of placing their elders in nursing facilities was not a culturally acceptable solution. PACE created a way to offer a spectrum of services using home care in an adult day setting. PACE has the longest and most extensive history of any program in managing total care for the frail elderly while containing costs.

PACE is centered on the belief that the elderly with chronic care needs and their families are best served in their homes and communities whenever possible. The goal of PACE is to keep participants healthy, safe, and as independent as possible in their own homes and communities. Care is managed individually with emphasis on specific circumstances of their health, ability to care for themselves, the complexity of family relationships, and the goals and desires of the enrollee and their caregivers.

PACE provides the entire spectrum of acute and long-term care services to their enrollees without limit as to duration or dollars. PACE serves persons 55 and older, who meet nursing facility criteria, in their own communities and, provides all of their health and long-term care needs. The program is centered on an adult day health care model, and combines Medicaid and Medicare funding.

Like many other state legislatures, the Virginia General Assembly recently expressed concern over the growing challenge in Medicaid funding. Medicaid spending now represents the second largest single general fund program in state government. Virginia is seeking to implement reforms through innovation and efficiencies. DMAS, in consultation with the appropriate stakeholders, is creating a long-range blueprint for the development and implementation of an integrated acute and long-term care system.

With legislative funding approved during the 2006 General Assembly, DMAS plans to implement one or more PACE program(s) by July 2007. This implementation would include DMAS grants of up to \$250,000 per PACE site to help cover the start-up costs associated with creating a suitable PACE facility. In addition, DMAS will develop a regional model for the integration of acute and long-term care services by January 2007. This model would be offered on a voluntary basis to elderly and clients with a disability.

The PACE regulations were revised: 1) to provide clarity and guidance to providers and other stakeholders; 2) to conform to the PACE provider application process as required by the federal Centers for Medicare and Medicaid Services (CMS); 3) to ensure that the DMAS regulatory scheme is in compliance with the Department of Social Services licensing standards; and 4) to support individual choice for PACE participants. In addition, new sections are being added to 12 VAC 30-10 (State Plan Under Title XIX of the Social Security Act) and 12 VAC 30-50, Amount, Duration and Scope of Services, to implement into regulations new PACE-related sections of the State Medicaid plan provided by CMS in the form of pre-print State Plan pages.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The regulatory action poses no disadvantages to the agency, public or the Commonwealth. The advantages of the PACE program are that elderly participants are able to maintain themselves in the community, which both enhances their quality of life and is a less expensive alternative to institutionalization.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Governor Kaine proposed and the General Assembly approved \$1.5 GF in 2007 in the budget to provide start-up funding for PACE sites across the Commonwealth.</p>
<p>Projected cost of the regulation on localities</p>	<p>The State does not expect this change to have any costs associated with it for the affected parties.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The PACE program provides services to individuals 55 or older, prescreened to meet nursing facility criteria; residing in the service area; who agree to all the conditions in terms of participation. Regulation changes affect these individuals and their families as well as the persons and businesses that provide services to these individuals.</p>

<p>Agency’s best estimate of the number of such entities that will be affected</p>	<p>Enrollment is limited by the attendance capacity of the PACE center (as of July 1, 2006, DMAS has the potential to serve 125 individuals and their families through the PACE services). There are approximately 6 potential PACE providers, each of which would qualify as a small business.</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>The State does not expect this change to have any costs associated with it for the affected parties.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The federal instructions describing how states must implement and maintain their PACE programs are set out in 42 CFR 460, subsections 2 through 210. These extensive and detailed regulations, in addition to the restrictions regarding pharmacy coverage under the Medicare Part D program, left no substantive alternatives to the State for providing PACE coverage for the elderly population this program is designed to serve.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment and is not expected to affect disposable family income.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Please Note: Subsequent to the review of this regulation by the Office of the Attorney General and the Department of Planning and Budget, the Centers for Medicare and Medicaid Services (CMS) published their final regulations covering PACE. CMS made several changes in the final PACE regulations that required DMAS to revise these State regulations at several points. These subsequent changes in the state regulations are noted in the chart below, in boldface type. In addition, for clarity, all references in the

regulations to either “PACE contractor” or “contractor” were changed to “PACE provider.”

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-10-140		Amount, duration, and scope of services: Categorically needy.	Adds new VAC references regarding PACE
12VAC30-50-20		Services provided to the categorically needy without limitation.	Adds reference to PACE
12VAC30-50-60		Services provided to the Medically needy without limitation.	Adds reference to PACE
12VAC30-50-320		Pre-PACE	This section was revised to reflect current federal provider requirements in the PACE provider application process. (1) Omit “not”, (2) omit “any”, (3) add “a.”
	12VAC30-50-321	Eligibility for PACE enrollees	Virginia determines eligibility for PACE with more restrictive eligibility requirements than Supplemental Security Insurance (SSI) (limits set at 165% of SSI), and in the same manner as applicants to the Home and Community Based Care Waiver programs. Spousal impoverishment protections will be in place in the PACE program, with personal allowance limits set at 165% of SSI.
	12VAC30-50-325	Rates and Payments	Provider rates will be set at a percent of fee-for-service costs and reviewed by the Centers for Medicare and Medicaid Services.
	12VAC30-50-328	PACE Enrollment and Disenrollment.	DMAS provides for the enrollment into and disenrollment from the PACE program.
12VAC30-120-61		Definitions	The following changes were made throughout these regulations to be consistent with the current federally approved application and for clarity. (1) The word “HCFA” was changed to “CMS” which means the Centers for Medicare and Medicaid Services. (2) The word nursing “home” was changed to nursing “facility.” (3) The regulatory reference for the adult day care regulations promulgated by VDSS

<p>12VAC30-120-61 (Definitions)</p>		<p>The first sentence in the Definitions section refers to “Program of All-Inclusive Care for the Elderly (PACE)”</p> <p>Definition of Adult Day Health Care Center (ADHC): “The ADHC must be licensed by the Virginia Department of Social Services.”</p> <p>Definition of "PACE plan" means a comprehensive acute and long-term care prepaid health plan, pursuant to §32.1-330.3 of the Code of Virginia</p> <p>"PACE site" means the location where the contractor both operates the PACE plan's adult day health care center and coordinates the provision of core PACE services.</p>	<p>was added. (4) “CFR” was defined. (5) Regulatory citation for nursing facility preadmission screening team was added. (6) The definition of the State Plan was changed to be consistent with other regulations. (7) The Transitional Advisory Group is deleted as providers and potential providers will have opportunity to review PACE requirements as the program evolves. (8) The purpose of the Virginia Uniform Assessment Instrument was clarified.</p> <p>This first sentence of the definitions section was clarified by adding the phrase, “<u>programs, as defined in 42CFR460</u>”</p> <p>This definition was as follows:</p> <p>The ADHC must be licensed by the Virginia Department of Social Services as an Adult Day Care Center (ADC) as defined in <u>22VAC40-60-10.</u></p> <p>This definition was as follows:</p> <p>"PACE plan" means a comprehensive acute and long-term care prepaid health plan, pursuant to §32.1-330.3 of the Code of Virginia and as defined in <u>42CFR460.6,</u></p> <p>This definition was as follows:</p> <p>"PACE site" means the location, <u>which includes a primary care center, where the contractor both operates the PACE plan's adult day health care center and coordinates the provision of core PACE services, including the provision of primary care.</u></p>
<p>12VAC30-120-62</p>		<p>General PACE plan requirements</p>	<p>(1) Additional information regarding the PACE provider agreement was added to</p>

<p>12VAC30-120-62(A)(12)</p>		<p>The PACE Agreement must include:</p> <p>“12. Medicare and Medicaid capitation rates;”</p>	<p>conform with those in 42 CFR 460 et seq. (2) Regulatory citations for related issues were added. (3) In Sections I through O, general Medicaid provider requirements are added. These are a part of other provider regulations and not specific to PACE. They include such things as mandated reporting for abuse, neglect, and exploitation, quality management review, criminal records checks, and documentation requirements.</p> <p>A clause was added to paragraph B clarifying that feasibility studies for PACE programs shall only be submitted in response to a Request for Applications.</p> <p>Revised as follows:</p> <p><u>“12. The Medicare and Medicaid capitation rate and the methodology used to calculate the Medicare capitation rate;”</u></p> <p>so that it now reads,:</p> <p><u>“12. The Medicaid capitation rate and the methodology used to calculate the Medicare capitation rate;”</u></p>
<p>12VAC30-120-62(J)(5)</p>		<p>PACE programs must meet the following requirements ...</p>	<p>Added sexual orientation as a prohibited ground of discrimination.</p>
<p>12VAC30-120-62(J)(13)</p>		<p>Notice requirements to DMAS if the PACE program changes ownership.</p>	<p>Replaced the reference to ownership change with the following notice requirement:</p> <p><u>CMS and DMAS shall be notified, in writing, of any change in the organizational structure of a PACE organization at least 14 calendar days before the change takes effect.</u></p>
<p>12VAC30-120-62(J)(15)(b)</p>		<p>b. Staff must meet any certifications, licensure, registration, etc. as required by applicable State law.</p>	<p>b. Staff must meet any certifications, licensure, registration, etc. as required by applicable <u>federal and State law.</u></p>

